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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ANTOLIN ANDREW MARKS,  
10 Plaintiff,  
11 v.  
12 MR. JENNINGS, *et al.*,  
13 Defendants.

No. MC08-5045

ORDER DENYING MOTION FOR  
RECONSIDERATION (Dkt. # 5)

14 On July 25, 2008, the undersigned rejected plaintiff's proposed complaint because  
15 plaintiff was not "under imminent danger of serious bodily injury or death." Dkt. # 3. Plaintiff  
16 filed a motion for reconsideration (Dkt. # 5) in which he argues that Andrews v. Cervantes, 493  
17 F.3d 1047 (9th Cir. 2007), compels a different result.

18 Motions for reconsideration are disfavored in this district and will be granted only  
19 upon a "showing of manifest error in the prior ruling" or "new facts or legal authority which  
20 could not have been brought to [the Court's] attention earlier without reasonable diligence."  
21 Local Civil Rule 7(h)(1). Plaintiff has not met this burden. Although Andrews has some  
22 remarkable similarities to this case (including identical plaintiffs and identical Eight Amendment  
23 claims), there are dispositive factual differences. In Andrews, plaintiff alleged that he was  
24 forced to live in a double cell with persons who had contagious illnesses (tuberculosis and  
25 hepatitis), with which he then became infected. C03-1218 (E.D. Cal.). The proposed  
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ORDER DENYING MOTION  
FOR RECONSIDERATION

1 complaint at issue here, however, alleges much more generally that persons in Immigration and  
2 Customs Enforcement custody have or may have contagious diseases and that the custodians do  
3 not adequately screen for all such diseases. The only example provided involves a food service  
4 worker who apparently contracted chicken pox while in custody.<sup>1</sup> Plaintiff was not forced to  
5 share a cell with this worker, nor does he allege that he contracted chicken pox. The facts do not  
6 support the conclusion that plaintiff is in imminent danger of serious bodily injury or death:<sup>2</sup>  
7 there is nothing in the record to suggest that plaintiff is in any more danger than everyone else  
8 who lives and works in close proximity with others. Plaintiff has failed to show manifest error  
9 in the Court's ruling based on the facts alleged in the proposed complaint.

10 Plaintiff's second assignment of error is also unpersuasive. Because the Court has  
11 determined that plaintiff is not in imminent danger, no part of the case can proceed. The Court  
12 also notes that the proposed complaint was rejected because the allegations do not satisfy the  
13 terms of the March 25, 2008, bar order. Section 1915(g) and its standards do not govern the  
14 undersigned's review in this matter.

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16 For all of the foregoing reasons, plaintiff's motion for reconsideration is DENIED.

17 Dated this 18th day of August, 2008.

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20 Robert S. Lasnik  
21 Chief Judge, United States District Court

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22 <sup>1</sup> Plaintiff alleges that Mr. Gomez-Hernandez was in custody for more than 30 days before he  
23 developed chickenpox. According to the Center for Disease Control, it takes only 10-21 days after  
24 exposure for someone to develop chickenpox.

25 <sup>2</sup> Plaintiff cannot avoid the application of the bar order by simply alleging that he is in imminent  
26 danger. The bar order requires that plaintiff actually show that he is in imminent danger of serious bodily  
injury or death. The Court will make this determination based on the objective facts alleged, not  
plaintiff's conclusory assertions.